

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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:
HEATHER GIBSON and
JONATHAN GIBSON, 08-CV-474
:
Plaintiffs, US Courthouse
-against- : Central Islip, NY
CROSS SOUND FERRY SERVICES, date
Time ^ a.m. ^ p.m.
Defendant. :
- - - - - X

TRANSCRIPT OF TRIAL
BEFORE THE HONORABLE LEONARD D. WEXLER
UNITED STATES DISTRICT JUDGE, and a jury.

APPEARANCES:

For the Plaintiff: CELLINO & BARNES
600 Old Country Road, Suite 500
Garden City, New York 11530-2045
BY: GEORGE R. GRIDELLI, ESQ.

For the Defendant: BADIAK & WILL LLP
106 Third Street
Mineola, New York 11501-4404
BY: ALFRED J. WILL, ESQ.
LISA ANN SCOGNAMILLO, ESQ.

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Proceedings recorded by mechanical stenography.
Transcript produced by computer.

Dominick M. Tursi, CM, CSR
Official US District Court Reporter

1 (The following ensued outside the jury at 9:30
2 am.)

3 MR. GRIDELLI: Good morning, your Honor.

4 I'm making a request that, instead of 25
5 minutes, you give me 30 minutes. And the reason being is
6 that I know it is a short number of days but we have had
7 14 witnesses.

8 THE COURT: Denied.

9 MR. GRIDELLI: Thank you.

10 (Recess take.)

11 (The following ensued in the presence of the
12 jury at 9:40 am.)

13 THE COURT: Be seated.

14 As I said yesterday, what we will do now is have
15 the summations by the lawyers. I put time limits on them
16 and I will tell them when they have five minutes left.

17 But remember, what lawyers say is not evidence.
18 It is only what the witnesses have said and the documents.
19 Listen to the lawyers, though. They may be able to put it
20 all together for you. But what they say is not evidence.

21 One of the jurors asked can we take notes. You
22 can but I don't think you need them. I see you don't have
23 a pad or a pencil.

24 A JUROR: I decided against it.

25 THE COURT: Good. Pay attention.

Summation for Plaintiff/Mr. Gridelli

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1 If you did take notes, I would tell you the
2 notes are only for you. You cannot reveal it to the
3 others because it is your interpretation of what is said.
4 That is why we have a court reporter.

5 With that we will start the opening statements.
6 Again, what lawyers say is not evidence. Plaintiff goes
7 first, defendant goes second, and plaintiff gets a short
8 rebuttal.

9 Plaintiff.

10 MR. GRIDELLI: Thank you, your Honor.

11 SUMMATION FOR PLAINTIFF

12

13 MR. GRIDELLI: Judge Wexler, Mr. Will,
14 Ms. Scognamillo, Heather and Jonathan Gibson, ladies and
15 gentlemen of the jury.

16 I would like to say first thank you very much
17 for your time, your attention, your dedication to your
18 responsibilities as jurors.

19 As you know, during the trial I wasn't allowed
20 to greet you, acknowledge you, have any conversation with
21 you. And that is because those are the rules of the
22 court. I just don't want you to think that I'm a snob or
23 I am rude. I put my head down if I saw you in the hallway
24 and walked right by you.

25 So I apologize for that. That is the one of the

Summation for Plaintiff/Mr. Gridelli

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1 rules of the court, and I'm sure Judge Wexler would have
2 hoped I listened to his other rules about speaking
3 objections as well as I did about not interacting with the
4 jurors.

5 We have a limited time to do these opening
6 remarks. I'm going to use my notes extensively because I
7 am compressed. Normally I like to do more of a
8 conversation type of closing but I can't and I will deal
9 with it as best I can.

10 At the end of the case, if you want to, you can
11 talk to any of the lawyers. I love to talk to jurors
12 regardless of verdicts because that is how I learn. I get
13 feedback and usually I hope it makes me a better lawyer.
14 Now I would like to talk about the case.

15 Number one, did the vessel list or tilt? This
16 is not a case where you have to prove anything beyond a
17 reasonable doubt. The judge told you at the beginning it
18 is a fair preponderance of the evidence. And I ask jurors
19 when we have that type of situation to consider it this
20 way. Think of the scales of justice. On any issue that
21 is in contention, put the evidence that is favorable to me
22 on one side and the evidence that is favorable to the
23 defendant on the other side. If it tips to any degree in
24 my favor, that is a fair preponderance of the credible
25 evidence. To any degree. If it tips to the defendant,

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1 then I haven't proven my point on that issue. Or actually
2 even if I can't prove it, either. But if it tips to any
3 degree, then I have proven that point.

4 Let's talk about what the defendant can say
5 about the fact that the vessel did not tip. He brought in
6 the three crew members: The engineer, the captain, and
7 Mr. Scott. And they all said nothing happened that night.

8 Now, you probably heard about the term the *Blue*
9 *Wall of Silence*. There is a theory that police officers
10 will never testify against each other or never testify and
11 say anything that could hurt another police officer. I
12 don't know if that is true in the seamen industry, in the
13 marine industry, but you know they all came in and they
14 said it didn't happen.

15 I wanted to ask them about: *Well, I know you*
16 *are still employed. I guess all but one are still*
17 *employed. What do you earn?* Because I think it would be
18 important to know. If they are making minimum wage, they
19 probably don't have any loyalty to their employer. But if
20 they are making 50, 100, 300, whatever, that might be some
21 motive for them to maybe side on the favor of the
22 defendant. But we asked those questions; Mr. Will
23 objected.

24 You had Mr. Scott, the defendant's expert. He
25 testified that he went out on that boat -- on that vessel;

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1 I think it is called a boat. I'm learning -- and he tried
2 to steer it in such a way that it would recreate what the
3 plaintiff said occurred. But he made it completely
4 different. He didn't do it when there was a clog in one
5 of the ports. Right? Use your common sense. It is not
6 the same type of test.

7 Remember, I asked him did you put line in there?
8 Because that is what was found. It was so bad for the Sea
9 Jet that night that it couldn't make the return trip. It
10 went out down the river and went back to New London. They
11 had to change ships. She had to go back on a different,
12 slow ferry if you will.

13 So Mr. Scott says: Well, it couldn't happen
14 because I tried to do it.

15 I just hope there were no passengers on that
16 vessel when he tried to do it. And do you really think
17 that if he could have tipped the vessel, he would have?
18 Or do you really think he would have come in and told you
19 that he did? This is a man who has been consulting for
20 over ten years with the defendant's attorneys and
21 testified and comes in.

22 And then remember Mr. Scott. He said the
23 captain would never accelerate quickly. And he said
24 because that would be, and then there was that dramatic
25 pause. Remember? He was thinking that would be -- and he

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1 waited and waited and waited, and finally he said: *That*
2 *would be bad.* Do you remember that?

3 Now, any part of the testimony you can ask the
4 judge if they will read it back to you. And if my
5 recollection is inconsistent with yours, ladies and
6 gentlemen, it is what you remember. Okay? Sometimes I
7 think something is in the case and it is not; because, you
8 look at all those boxes. This is five years of
9 litigation, four and a half years, whatever. So I
10 apologize. It is your recollection that counts.

11 But then I asked him, I said: Mr. Scott, when
12 you were thinking about a word to use, did you ever think
13 of the word *negligent*? Oh, no. It was *bad*.

14 So you know now that a captain can do something
15 by accelerating quickly that would make something bad
16 happen to the vessel. He also said something about:
17 Well, it can never veer. It could never tip sharply.
18 "*Really. Never?*" "*No. It could never.*"

19 And then I showed him the manual here. See, it
20 says it can. Oh, only at high speed.

21 Well, we could argue whether it is just at high
22 speed or not, but he had denied that it could ever do it
23 until I confronted him with that manual. And then it was:
24 Oh, well, at high speed.

25 Is that the type of testimony, the quality of

Summation for Plaintiff/Mr. Gridelli

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1 testimony, that you want to base your verdict on? I
2 submit that it isn't. Let's look at the evidence to show
3 that there was a listing or a tilting.

4 Heather Gibson testified. I'm not going to go
5 over what she said. You know what she said. Jessica
6 Gibson, her daughter. Stephen Gibson, her son. Nicholas
7 Gibson. I would hope I had more moms on this jury but I
8 don't, because I think any mom would realize you would
9 never bring your kids in to do something to get them
10 involved in a court proceeding and tell them to lie about
11 something. What kind of mother would do that?

12 In this case Heather Gibson didn't. She just
13 had to call her children in and say just tell them what
14 happened.

15 And you know this whole conspiracy theory about
16 the defendant that this was all made up? Please, ladies
17 and gentlemen, if you want to make up a story, just say:
18 *I'm on the ship. I stepped out of the booth. There is*
19 *water, soda. I slip. I fall. I landed on my butt.*
20 *That's my case.*

21 That is so much easier. We don't have to talk
22 about whether the boat can list or not list. We don't
23 have to bring experts in. It is very simple. I slipped
24 and fell on something. It was an unsafe condition. What
25 an easy case this would be.

Summation for Plaintiff/Mr. Gridelli

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1 But that isn't what happened. This is what
2 happened. The boat listed, threw the kids off the seat,
3 she had to go try to help her children, as any mother, as
4 any parent would, reach to get them. The boat came
5 slamming down. She hurt herself.

6 So what does she do? Does she tell anyone on
7 the ship I'm hurt? No. She did say to her children I
8 think my spine went into my head. And they make a big
9 thing about it.

10 And you didn't notify anybody on that ship? You
11 didn't notify anybody on that ship? When she came back,
12 she tried to notify somebody. Remember, at Orient Point?
13 And all the offices were closed. So I asked the gentleman
14 there, the chief operator of the whole system: When do
15 the offices close? Back then. Gee, I don't know. Then I
16 asked I think the captain, at least one of the crew
17 members: When did the offices close? Now, this is
18 November, remember. It is winter. So likely they close
19 earlier. But he didn't give us that answer either.

20 Is that believable? It is unbelievable. They
21 don't want you to know. It is consistent with her story
22 that she tried to make a complaint. But what happens?
23 Next day she calls. She speaks to a Mary.

24 Ladies and gentlemen, what is a good indicia of
25 truthfulness is details. Details. She says I spoke to a

Summation for Plaintiff/Mr. Gridelli

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1 woman. She remembers her name: Mary. Mary said call
2 back Sunday. Speak to William. I called back Sunday. I
3 speak to William. He says I'm the wrong guy. Call back
4 Monday and speak to Chris England. She called back
5 Monday.

6 But talking about details, remember the two
7 boys? They said they fell out? Their giggling? They
8 weren't injured. And their food came off the table.
9 Those are details. How Heather said, with the children
10 there: Gee, I felt like my spine went in my head. Well,
11 kids remember that. Those are details.

12 So she calls, leaves a message for Chris
13 England, who I think is the assistant manager or operating
14 officer, I don't remember his title, but you remember he
15 still works for them.

16 I asked Mr. Sise, I asked the captain, does
17 Chris England still work there? Yes, he does. Remember
18 that because that is important.

19 So she goes to the hospital. She tells them
20 what her problem is and they diagnose a fractured coccyx,
21 at Peconic Bay. And later on there is an MRI that says it
22 is not fractured. Fine. Whether it is fractured or not
23 is not the issue. The point is that where did she get
24 this injury?

25 Even their doctor said: Well, there was trauma

Summation for Plaintiff/Mr. Gridelli

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1 to the coccyx. Doesn't that tell us that is what
2 happened? That is why it was on the boat? That is why
3 the boat did this? We have proof. They have an injury.
4 Are they going to say: Oh, no. This happened two days
5 later. She rolled out of bed, fell on her buttocks and
6 hurt her back? That is ridiculous. So the injury,
7 itself, proves that something happened that night.

8 What about Captain Thomas? He specifically
9 remembers her being on the ship that night. Wow! Now,
10 remember, she had been taking that ship for about a
11 year-and-a-half almost every other weekend round-trip.
12 That is, what, 70, 80 trips? And if nothing happened that
13 night, why would Captain Thomas remember specifically that
14 she was on the ship that night?

15 You know why? Because something happened.
16 That's why. Otherwise, there would be absolutely no
17 reason for him to be able to specifically remember, on 70
18 or 80 trips, oh, yes, she was there on that one.

19 What about Jessica Gibson? Her story is
20 consistent with how the boat tilted. But she also said I
21 could tell my mom was hurt, so I didn't go visit my dad.
22 I came back with my mom back to Orient Point.

23 Remember that? That is what she said. I could
24 see my mom was hurt. I didn't want to leave her alone.
25 Even in the defendant's opening statement, he said that

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1 Heather Gibson, in sum and substance, is trying to take
2 advantage of what occurred on the voyage.

3 Take advantage of what? It can't be the
4 backflushing system. The boat is completely calm. And a
5 lot of the defendants witnesses said it happens quite
6 often. And she is on the boat 70 or 80 times. So
7 obviously it happens quite often.

8 So what event, what incident, is the defendant
9 saying she is trying to take advantage of? Obviously, the
10 fact that the boat listed.

11 But every trial attorney tries to look for that
12 one piece of evidence that we would call the smoking gun,
13 the piece of evidence that is so strong it is going to
14 prove, it is going to win the case for you, it is going to
15 prove the point for you.

16 And in this case we have a smoking gun. And I
17 bet you you know what it is, and if you don't I'm going to
18 tell you what it is. It is the conversation between
19 Heather Gibson and that Chris England.

20 Remember on Monday? He is the third person she
21 talks to. What does Chris England say? I spoke to the
22 crew and know what happened Friday night. I spoke to the
23 crew and I know what happened Friday night. Here's a
24 claim number. And some other stuff.

25 What happened? The crew said nothing happened

Summation for Plaintiff/Mr. Gridelli

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1 to you but they obviously said something happened to Chris
2 England. That is why he said I know what happened Friday
3 night.

4 And remember, as I said, two witness said he
5 still works there. Chris England: Was he in this court
6 today to deny I never said that or I didn't refer to that
7 or I didn't mean that? Why didn't they call him?

8 Mr. Sise and one of the other witnesses said he still
9 works there. Well, maybe he is the one guy that says:
10 You know what? I draw the line at perjury.

11 So now you know the incident happened. How do
12 you feel when the defense produces evidence that basically
13 is trying to pull the wool over your eyes? You know, the
14 defendant could have said: You know what? The incident
15 happened. Let's just argue over the extent of her
16 injuries. That would be fair. I would understand that.
17 But to deny that the incident even happened? No, they
18 just blatantly deny it did.

19 Mr. Will called her an opportunist and then he
20 used some examples.

21 9:38? 48. I have, what, about six more
22 minutes, your Honor?

23 She is an opportunist because she married
24 Jonathan Gibson. Jonathan Gibson was on disability. She
25 knew that. When I wanted to ask her what did Jonathan

Summation for Plaintiff/Mr. Gridelli

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1 make before disability, to show you know that it was much,
2 much more than what he made now, who objected again? Al
3 Will, defense attorney.

4 He said in his opening: Oh, and she got her
5 name on the deed. And then I asked Jonathan Gibson:
6 Well, how did that happen? Oh, I asked her to add it.
7 She didn't even want to. I had to pretty much convince
8 her.

9 So why is that being said? Why is Mr. Will
10 trying to paint my client in such a way? He brought out
11 the fact that she filed for bankruptcy. He brought out
12 the fact that she was terminated from two jobs. He
13 brought out the fact that she married Mr. Gibson within
14 four months of her divorce.

15 Why is he demeaning her? Why is he degrading
16 her? It is a personal injury case. Let's stay with the
17 facts. He asked her about birth control pills? He has
18 access to her OB-GYN records. Oh, my goodness.

19 You know, the most important thing in any trial
20 is credibility of witnesses. And I submit to you the
21 second most important thing is credibility of the
22 attorneys. And yes, what we say is not evidence but we
23 are allowed to make argument to you. We are allowed to
24 sum up the evidence. We are allowed to tell you what we
25 think the evidence shows. So hopefully I have earned your

Summation for Plaintiff/Mr. Gridelli

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1 trust and I ask you to consider whether the other side has
2 earned your trust.

3 THE COURT: You have five minutes left.

4 MR. GRIDELLI: I'm sorry?

5 THE COURT: You have five minutes left.

6 MR. GRIDELLI: Sorry. Then I have to skip quite
7 a bit.

8 Oh. Receipts. Remember, I brought in the
9 receipts and I said, the judge said why do you need the
10 receipts? Everyone admitted she was on the ship.

11 That's true. But this is why the receipts were
12 important. If you are injured you don't know if they are
13 going to admit that you were on the boat, you keep the
14 receipt. This is proof that something happened. Why does
15 somebody keep a receipt for years? It is to prove, I
16 don't know, maybe they are going to say I wasn't on the
17 vessel. Hey, I have proof. That's why. That is evidence
18 that something happened.

19 And you remember all the details that they went
20 into about her sexual life between two of them, et cetera,
21 et cetera.

22 When I was reading the depositions, and I wasn't
23 the attorney when it happened, I got the impression of:
24 My! It's like the rape victim. You know, you accuse
25 somebody of rape and then, boy, they go after you. They

Summation for Plaintiff/Mr. Gridelli

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1 just try to bury you. They just try to hurt you so that
2 you don't proceed. They try to make that person a victim
3 two times.

4 Don't let Heather Gibson be a victim again.

5 But I think the most important statement from
6 two of the witnesses is this: When we asked Nicholas
7 Gibson what happened and he said I thought the ferry or I
8 thought the boat hit a rock. Remember that? Out of the
9 mouth of babes.

10 I will get a chance to come back to talk more
11 about the injuries, because I'm going to run out of time
12 on this. But the first question on the jury voir dire
13 sheet is: *Were the defendants negligent?* Sure. They
14 caused the boat to list. It wasn't the water. It wasn't
15 the weather. I asked even their own expert: Well, what
16 can it be? It wasn't any outside influence. He said:
17 Well, it is the Loch Ness Monster. Ha-ha!

18 Okay. Please use your common sense. You know
19 it had to be how they maneuvered the boat. They did it.
20 They made a mistake. Fine. Let's own up to it. Let's
21 move forward.

22 When you talk about the defendant, remember the
23 defendant in this case is Cross Sound Ferry. But it is a
24 company. It acts through its individuals. So if the
25 pilot did something wrong, Cross Sound Ferry did something

Summation for Plaintiff/Mr. Gridelli

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1 wrong. You understand that. We are not going after an
2 individual. It is the company that is responsible for the
3 actions of its employers.

4 So now she goes, she has a coccyx injury. She
5 has herniated disks in her lumbar spine. She starts
6 treating. She treats with Peconic Bay. She treats with
7 Long Island Spine. She treats with New York Orthopedist.
8 She eventually treats with St. Catherine Siena. She
9 treats with Dr. Davis. She has epidural injections, just
10 to relieve the pain.

11 And she says, she admits, yes, it is good for
12 about three or four weeks and then the pain comes back.
13 It is like three injections. Then she has the tingling in
14 her hand. And remember, my expert said look, even my
15 doctor said everything was related to this. It is like
16 hitting the coccyx and everything is right above it, each
17 bone, and it affects it and it goes up the ladder, if you
18 will.

19 Their expert said no. He said the spinal fusion
20 wasn't related because it is three-and-a-half years ago
21 and said the reason why, the main reason why, was because
22 she didn't complain of anything for ten months. So when
23 cross-examined him I said: *Doctor, is that in your*
24 *opinion the main reason?* He said: *Yes, the main reason.*
25 Then I asked him again, and he said: *Well, one of the*

Summation for Plaintiff/Mr. Gridelli

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1 *main reasons.* He is an expert witness. He's testified
2 hundreds of times. He knew I was going after him.

3 Then I said: *Doctor, instead of ten months how*
4 *about five months? If the plaintiff came in after five*
5 *months, would you change your opinion that it wasn't*
6 *related? No, I wouldn't.*

7 How about three months? One month? Whatever I
8 asked: *No.*

9 He knew I was setting a trap for him. And what
10 did he have to say? To protect his opinion, he said it
11 was only because, I would only agree if the symptoms were
12 one or two days after the incident.

13 One or two days? Heather Gibson didn't even get
14 to the hospital for three-and-a-half days. It means no
15 matter what she had, the doctor would say well, it is more
16 than one or two days.

17 Then we showed you within I think ten days she
18 had marks on her hand; that she has this numbness or this
19 tingling or whatever. And every doctor agreed the nerves
20 coming in and out of the C6/7, which is where the fusion
21 was, affects that part of her body.

22 There it is, ladies and gentlemen, proof that
23 even the initial injury was affecting that part of her
24 spine.

25 So the first question: *Was there negligence?*

Summation for Defense/Mr. Will

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1 Clearly.

2 Boat listed? That is a dangerous condition.

3 Two. *Was that negligence a proximate cause of*
4 *the injury?* Meaning, would a reasonable person say --

5 THE COURT: Your time is up on this first
6 section.

7 MR. GRIDELLI: -- this is what caused the
8 injury.

9 I will be back to discuss the injuries in a
10 little more detail.

11 Thank you.

12 SUMMATION FOR DEFENSE

13

14 MR. WILL: Good morning. It is good to be in
15 front of you again.

16 It has been a good trial and I want to thank you
17 for being attentive and listening to the evidence and in
18 watching the videos.

19 And I'm sure you observed Heather refer
20 throughout the trial and you have seen Heather sitting at
21 the witness stand, craning her neck, looking back at the
22 videos as they were being played.

23 A lot of things have been said by the plaintiff
24 but not a lot has been proven. I want to first point out
25 with respect to her allegations in this case.

Summation for Defense/Mr. Will

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1 As we said during the trial, she filed a lawsuit
2 almost immediately after the injury. When she filed the
3 lawsuit, she alleged that she was caused to be thrown from
4 her seat.

5 But then during the course of the litigation she
6 filed papers where she said that the Sea Jet was engaged
7 in a counterclockwise turn. And then she goes on to say
8 the ferry hit a wave that was made by the ferry. She
9 keeps changing the story.

10 Roy Scott, the marine expert who we had, former
11 Coast Guard inspector, indicated that her story does not
12 comport with the laws of physics because if she had been
13 up when the vessel accelerated going forward, she would
14 have been thrown this way. She wouldn't have been thrown
15 back, she would have gone forward. He made the analogy.
16 It is very clear she would not have gone in any direction
17 but over the table. Her allegations were not supported
18 that there was any incident, by the captain, the crew, or
19 the engineer.

20 Counsel has brought out that, oh, code of
21 silence. Well, if I hadn't brought the crew members in
22 and I didn't want to bore you with these crew members,
23 what do you think he would have been saying? Where are
24 the crew members? Why weren't they here? But we brought
25 them in.

Summation for Defense/Mr. Will

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1 In addition, we brought in Mr. Jadamec who was
2 the engineer that night who doesn't work for the company.
3 He came in on his own to tell you nothing happened that
4 night. In his own books, the engine log, there is not one
5 notation of anything unusual. Not one. Nor is there any
6 notation in the vessel's log that anything unusual
7 happened during or after the backflush.

8 Sure, they backflush. It was a common
9 occurrence to get something in a jet. They would stop,
10 they would backflush, and then the captain would proceed.
11 Heather Gibson's testimony on that is just not credible.
12 It is an election year and we hear about flip-flopping.
13 That is what we see here, flip-flopping stories. I get
14 thrown back. I get thrown out. And then we have the
15 testimony that it was the children who fell out of their
16 seats. Well, who was it when you filed the complaint?
17 Did you fall out of your seat or was it the children?

18 Now, Expert Scott has testified that it is
19 physically and mechanically impossible for sudden
20 acceleration of that vessel. It is a catamaran and it is
21 an inherently stable craft. And during deliberations you
22 will see the pictures that we entered into evidence
23 showing that it is a very large and very stable craft.
24 This is not a vessel which is going to go up and come out
25 of the water. The analogy of the bicycle and the car.

Summation for Defense/Mr. Will

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1 It's got dual hulls on either side (sic) which make it
2 extremely stable. It is just not going to happen. It
3 didn't happen because it couldn't happen.

4 Now, counsel has entered into evidence a page
5 from the operations manual. And again he claims, you
6 know, this is her claim, sudden acceleration. But the
7 operation manual for the Kamewa system clearly states that
8 there is a significant delay between the jet response time
9 and vessel response time.

10 I mean, this is from the engine manufacturer.
11 There is a delay. So where is sudden engagement? Where
12 is the proof? Where is the proof that anything happened?
13 Other than Heather Gibson, who is looking in this case to
14 collect. This is a stable, properly manned United States
15 Coast Guard vessel. It didn't happen because it couldn't
16 happen.

17 I want to talk briefly about her medical claims.
18 Here again she changed her story. First of all, it was
19 the coccyx. Well, I injured my coccyx. But when the
20 x-ray, itself, and the MRI film are actually looked at by
21 Dr. Sultan, he said there is no evidence of a fractured
22 coccyx and no evidence that it was ever fractured. There
23 the no evidence of healing.

24 Dr. Marcus, on the other hand, indicated that it
25 could have been fractured but he never looked at any of

Summation for Defense/Mr. Will

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1 the films. All he looked at was the report. The evidence
2 is in the film, itself. Sultan reviewed the MRIs.
3 Marcus, who they just hired last month, Dr. Marcus was
4 just brought on board as their hired expert last month.
5 Of course. What do you think he is going to say? He is
6 getting paid \$4,000 to come in here and follow the story
7 line. But did he look at the films? No. He was given
8 selective records and he said based on my experience and
9 what I think, it is connected. Three and a half years
10 later.

11 I mean, let's be realistic here. She changed
12 her story in connection with her lower back, and when she
13 realized it wasn't a lower back claim she switched gears
14 three-and-a-half years later: Oh, my neck. Now it is my
15 neck. Somehow it migrated from her butt up to her neck
16 three-and-a-half years later. She has surgery. She paid
17 a nontreating physician to come in and give an opinion
18 solely on what she said.

19 In other words, this case resolves around one
20 thing: What she said. There are no witnesses. Unless
21 you credit the children, who testified I would do anything
22 for my mother. I would do anything for my mother. That
23 is the essence of bias.

24 Dr. Marcus also admitted that when he reviewed
25 the records he saw no contemporaneous medical support for

Summation for Defense/Mr. Will

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1 an injury to her neck. He reviewed the Peconic records,
2 which were a few days later, and he reviewed Long Island
3 Spine. There was nothing to indicate a neck injury. Of
4 course Dr. Sultan indicated that to have surgery in
5 connection with the neck injury you need a traumatic event
6 that is reported within a matter of a couple of days; a
7 reasonable time.

8 Of course they are talking about the tingling in
9 the fingers and all of this. These little tinglings. But
10 she failed to tell Dr. Marcus that she had shoulder
11 problems and she was complaining of tingling in 2006.
12 They didn't disclose those records to Marcus. Why do you
13 think? Because he would say: Well, maybe we have a
14 problem here. No. They held those records back. But you
15 saw them and we saw them. 2006. Shoulder problems,
16 tingling, weakness in her right side. It is all there.

17 Now, both Dr. Sultan and Dr. Marcus testified
18 that the neck surgery was specifically to resolve
19 arthritic osteophytes. These are things which the doctors
20 testified developed over years. Osteophyte is a
21 degenerative process. And both Dr. Sultan and Marcus
22 testified that the condition, and this is very important,
23 the condition for which she had the surgery, the herniated
24 disks in 2011, didn't exist in 2008. A comparison of the
25 two MRI reports. And again, Sultan reviewed the MRIs,

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1 Marcus didn't, but he agreed with the reports. He
2 indicated this condition didn't exist. They are trying to
3 pin something on Cross Sound Ferry for a condition that
4 did not exist.

5 Further, Dr. Sultan's review of the operative
6 report points out that the problem was a tear in a
7 ligament, which was where the herniation was. Distal
8 material through the ligament. He said: Look. This
9 condition didn't exist in 2008, and looking at the MRI
10 there is no evidence of healing. This is a new condition.

11 This is a new condition. The herniation is not
12 related to any incident three and a half years later.
13 This was a new condition. They are trying to bootstrap
14 some tingling, for which she had prior issues with her
15 shoulder, into a major surgery that is not related.

16 Further, Dr. Sultan testified that during her
17 examination she was exaggerating her symptoms. She was
18 resisting, not moving her neck. But when he did different
19 types of tests he was able to tell that she did have the
20 range of motion even though she was trying to phony up the
21 symptoms.

22 Further, he found that her complaints were not
23 based on any dermatol distribution or objective medical
24 finding.

25 Speaking of medicals and speaking of witnesses

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1 who don't appear. She was treated by Long Island Spine
2 for this lower back issue for about three years and then
3 she switched over to Dr. Chernoff for another year. Where
4 are they today? How come Dr. Chernoff isn't sitting here
5 to testify and say it is causally related? And where is
6 Dr. Abbasi and Dr. Dowling from Long Island Spine? How
7 come they aren't sitting here? How come they haven't
8 testified to say, yes, in our opinion this condition that
9 she had, the surgery, was related to some incident? They
10 don't want to be involved.

11 So they went out and they hired a hired gun, Dr.
12 Marcus, a few weeks ago. Just got his report a few weeks
13 ago. Oh, now we have Marcus. Who is he? Well, they
14 didn't want to testify, their doctors did not want to
15 testify, so they went out and they brought Marcus.

16 MR. GRIDELLI: Objection, your Honor. Side bar.

17 THE COURT: Overruled.

18 What lawyers say is not evidence, therefore it
19 doesn't matter.

20 Go ahead.

21 MR. WILL: Now, Heather Gibson admitted that she
22 didn't report this so-called trip to any crew member that
23 night. That night, over and back. Or on the return trip.
24 Nor on Sunday night.

25 But don't you think that if she hurt her back

Summation for Defense/Mr. Will

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1 and her kids fell out and her daughter, her daughter said
2 mom, I'm going to come back with you on the night trip
3 because you are telling me you hurt, don't you think that
4 when she was hurt on that trip they would hunt down a crew
5 member and say we've got a problem here? I hurt myself?
6 Didn't happen. It didn't happen.

7 Why didn't she tell the night watchman at Orient
8 Point? Why didn't she tell Captain Thomas when he was
9 walking the deck and he saw her?

10 Now, counsel made a point of saying, oh, Captain
11 Thomas remembered speaking to her. Yes, Captain Thomas
12 remembers because she went and asked about the return
13 trip. They had a few conversations. And she had ample
14 opportunity to say: You know something? My kids fell
15 down. I jammed my spine. I hurt myself.

16 Didn't happen. This whole event didn't happen
17 because it couldn't happen. Mechanically.

18 It is a question of her credibility. There she
19 is. She is here, making a claim.

20 Nor did she seek any medical attention Friday
21 night. If her back was hurting her so much with her
22 daughter, why didn't she go to the emergency room? She
23 didn't. Not Friday night. Not Saturday night. Not
24 Sunday.

25 As I said in my opening, this is an

Summation for Defense/Mr. Will

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1 afterthought. And her attempt to implicate and identify
2 this former US Marine, Jeremy Barboza, as someone who
3 heard the commotion, that was really embarrassing. I
4 mean, this guy is only 5-8. He has never worn eye
5 glasses. Has a shaved head. And he has a distinctive
6 beard.

7 She described him as 5-10, crewcut, glasses. I
8 mean, it was an embarrassment. An embarrassment for him
9 and an embarrassment for us.

10 So I'm asking you, do you think that an incident
11 that she is claiming of that particular magnitude, if she
12 is claiming the vessel went up and slammed down and no
13 other passenger was affected, nobody else spilled their
14 coffee or no one else dropped something or fell, just her,
15 it just happened to her, isn't that funny? Just happened
16 to Heather and her family on the second deck.

17 Sure, there were other passengers. The records
18 show there were more than just Heather and her family.
19 But no one complained. It didn't happen because it
20 couldn't happen. The vessel physically does not do what
21 they claim it did. And it is not capable of sudden
22 acceleration.

23 Now let's talk about the announcement. First of
24 all, when the vessel left port there was a Moderate Sea
25 Announcement advising passengers to remain seated. You

Summation for Defense/Mr. Will

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1 are on the water. Let's use our heads here. Right?

2 Captain Thomas made three backflushing
3 announcements, three within the space of 10 minutes,
4 saying we are slowing the vessel down. We are going to
5 clear a clog and we will be back up to speed shortly.

6 Their own expert, Clifford, testified that he
7 was aware that three backflushing announcements were made
8 in ten minutes. And these announcements advise passengers
9 of impending movement and that the vessel is going to be
10 moving shortly, back up to speed shortly. Those were his
11 words. That is where their expert, he admitted that.

12 Roy Scott, the Coast Guard investigator, said
13 the captain made three announcements in 10 minutes. That
14 is certainly reasonable care. Right? What more are you
15 supposed to do? Walk around the ship and tell everybody?
16 To hold their hands? The bottoms line is, the three
17 announcements were made within ten minutes. And everybody
18 knew the ship was going to be moving. And moving slowly.

19 The judge is going to tell you that in order to
20 find any negligence on the part of my client, you have to
21 find both a foreseeable danger of injury and conduct which
22 is unreasonable in proportion to the danger. Two things
23 you have to find.

24 Now, you have heard the operations manager, Dick
25 Sise, say it has never been reported to him that the

Summation for Defense/Mr. Will

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1 vessel has suddenly engaged, gone up out of the water, and
2 slammed down. Right? So there was no foreseeable danger.
3 There was nothing that they said: Oh, well, we have had
4 this problem before so we have got to be aware of it.
5 There is no notice of any type of a condition.

6 And, secondly, there was no foreseeable danger
7 given that Clifford's testimony was that these
8 announcements were made, three within ten minutes.
9 Neither of the conditions are satisfied and there can be
10 no finding of anything improper by Cross Sound. Even
11 assuming, even assuming for the stretch of the
12 imagination, anything occurred, there was no foreseeable
13 danger.

14 (Continued on the following page.)
15
16
17
18
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24
25

Summation - Defense/Mr. Will

621

1 MR. WILL: Now let's talk about bias. And again
2 he talks about the blue code of silence. But the real
3 bias, as I indicated earlier is seeing with Ms. Gibson's
4 children who testified at their position at a trial. I
5 would do anything for my mother. I mean let's face it,
6 they're kids. And they were taken, and we've established,
7 and the evidence shows that they were coached and
8 rehearsed. Not only by her, by Mr. Gridelli.

9 The words *slammed down*, the word *backflushing*.
10 Again, what the funny thing is, in that announcement, the
11 backflushing announcement, they say, *we're going to flush*
12 *the clog out*. They don't use the word *backflushing*. It's
13 not used. You will see the announcement.

14 So where did they get the word *backflushing*
15 from? Answer: Coaching. All right, let's go over the
16 words; *slam down*, *backflushing*.

17 In fact Nicholas testified that it was
18 Mr. Gridelli who said, Did the boat go up and down, turn
19 and slam down? Is that a leading question or a piped in
20 answer, if I have heard it.

21 And you know, I find it amazing that Nicholas,
22 who was five at the time couldn't remember some simple
23 details. But he could remember that his mother said, Hum,
24 felt like her spine went right through her head. Wow, he
25 remembered that. It's like right on cue. It's like we

Summation - Defense/Mr. Will

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1 all sat in on that meeting.

2 Okay, what are you going to say? Oh, slam down
3 backflushing, oh it went right through her spine. Isn't
4 that convenient? Right? Let's just tie-in right up the
5 chain right to her head. Come on.

6 It's a disgrace. Quite frankly I was
7 uncomfortable questioning the kid. I have four kids of my
8 own. Maybe I don't look like I have four kids, but I do.

9 THE COURT: We're not interested in your family.
10 Continue.

11 MR. WILL: Thank you, your Honor.

12 I was very uncomfortable questioning the kids,
13 but I didn't put her up. I didn't put these kids up there
14 and subject them to the scrutiny, she did. Again, she's
15 the plaintiff. No, this was unwitnessed unless you
16 believe these coached children. They sat there and they
17 skipped and hesitated on questions and other details. But
18 yet on certain words, bing, they came right in on cue.

19 Let's just talk a second about the loss of
20 services claimed by Jonathan over there. The evidence has
21 shown that they can and still do everything that they used
22 to do together. Four years since this. Four vacations;
23 Florida for ten days, Disney World walking around,
24 Universal. Jersey shore. They had old boats. They have
25 new boats. They go out for hours at a time on the boats.

Summation - Defense/Mr. Will

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1 They go fishing. They go shopping together. They go out
2 to eat. She cooks for him. She cleans for him. They go
3 to the kids' games. Nothing has changed. Life goes on as
4 usual. Nothing has changed. There was no interruption in
5 their lives, and that is proven by the videos.

6 And even to this day, she sits there and said
7 I'm almost at a hundred percent.

8 Now let's talk a minute about the videos. You
9 saw the videos of Heather Gibson in December of 2007. And
10 this incident happened when? In November. Wow, she's out
11 and about, going shopping, going to the donut store, going
12 to videotapes. That was in December.

13 And in January of 2008, a couple of months
14 later, no interruption. I mean she is walking around
15 business as usual. And in February of 2008, selling and
16 walking those dogs, carrying those dogs. She may say,
17 well I had a back injection. Well that back injection
18 wasn't until April of 2008, well after these videos were
19 taken.

20 Now --

21 THE COURT: You have five minutes left.

22 MR. WILL: Thank you, your Honor.

23 Now what did we see in the videos? We've seen
24 her bending. Oh, but at the deposition, it's too painful
25 to bend. And what do we see her doing? Oh, she's at the

Summation - Defense/Mr. Will

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1 basketball game, squatting for what, a minute and-a-half,
2 squatting on the balls of her feet for a minute
3 and-a-half, bouncing a basketball. I mean, come on.

4 And we've got the video of her being pulled
5 around by this massive, massive Saint Bernard. I mean is
6 that a woman who has a disability?

7 And of course, the dog loving photo. Yes,
8 carrying that, and holding that dog for an unlimited
9 amount of time, this big Saint Bernard puppy squirming in
10 her hands. Look at the smile on her face. Is she
11 grimacing? Does she look like she's in pain? Of course
12 not, absolutely not.

13 There was no interruption of what they did;
14 bending, running, squatting, carrying the dog. You've
15 seen the videos of her. She said, Oh, I can't get in my
16 car. I can't get out of my car. I can't move easily,
17 everything is stiff.

18 You saw the videos, moving fluidly. You saw her
19 turning her head, like I said in the beginning, like an
20 owl. I mean there she was, pulling out of that parking
21 spot, this way, and that way, this way, nothing wrong with
22 her neck. Come on. And this was shortly after the
23 incident. Three and-a-half years later, oh, geeze, I need
24 surgery.

25 Members of the jury, how can you not be

Rebuttal Summation - Plaintiff/Mr. Gridelli

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1 persuaded by the videos? How could you not be persuaded
2 by the videos? You've seen them.

3 The evidence is there. Cross Sound Ferry didn't
4 do anything wrong. It didn't happen because it couldn't
5 happen. You're savvy New Yorkers, all of you. And savvy
6 New Yorkers are not fooled. They're not fooled.

7 And I'm asking you to return a verdict for the
8 defendant.

9 Thank you very much.

10
11 **REBUTTAL SUMMATION - PLAINTIFF/Mr. Gridelli**

12 **MR. GRIDELLI:** Ladies and gentlemen, I only have
13 five minutes. This is going to be quick.

14 Remember I said credibility of attorneys, how
15 important that is when they argue something?

16 Where in this case is there any evidence that
17 the doctors who treated her didn't want to testify, didn't
18 want to come in and testify? Point now, I'll go sit down
19 and say they win. Point out any evidence in this case
20 that he said the doctors refused to testify, didn't want
21 to get involved. Credibility of attorneys when they tell
22 you something.

23 He said no one else spilled coffee on the ship.
24 No one else was injured. Is there any testimony in this
25 case about that? Any testimony? Other than Mr. Will

Rebuttal Summation - Plaintiff/Mr. Gridelli

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1 telling you that. Credibility when an attorney tells you
2 something, I hope you should be able to rely on it.

3 And the complaint says she was thrown from her
4 seat. Have you dealt with attorneys? Did you ever do a
5 contract, or buy a house, or sell a house? Did you read
6 the contract, or does the attorney say just, sign here.
7 Maybe other than your will, I would think you would read,
8 most attorneys don't. And maybe that is why Mr. Mulvehill
9 who drafted the complaint is no longer her attorney.

10 The announcement. We know from Scott's only
11 testimony that the boat can, remember accelerate quickly,
12 a very bad thing can happen. So we know. You know, and
13 he said it. That's his expert. A very bad thing can
14 happen. So there should be an announcement: Ladies and
15 gentlemen we're about to proceed now. We finished the
16 backflush. Okay? Something could happen where the boat
17 could tilt or list. Please remain seated, just secure
18 yourself. That's the only announcement we need, and
19 nothing would have happened.

20 I got to get to the medicals.

21 Both experts said she had a degenerative disc
22 condition, and that many, many people have that. But she
23 was asymptomatic. That means she had no symptoms. She
24 was symptom free.

25 Now the trauma comes and it produces pain. She

Rebuttal Summation - Plaintiff/Mr. Gridelli

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1 goes from a symptom-free condition to a painful condition.

2 So, and listen to the judge's charge. If they
3 cause an injury like a herniated disc, they're
4 responsible. If they create a condition or exacerbate a
5 previous condition, exacerbate a previous condition -- in
6 this case the degenerative disc disease -- they're
7 responsible. She was symptom free. Her whole life, she
8 was 36, never had a problem. And now for four and-a-half
9 years she has been treating with doctors and had to have
10 surgery.

11 Quickly, let's talk about the video,
12 surveillance video, 12 days, 13 days. Yes, they have her
13 walking. Yes, they have her squatting. Yes, they have
14 her bending in the car. Yes, they have her holding coffee
15 and doughnuts. Where is the video of her playing soccer
16 with her daughter? Where's the video of her walking the
17 three miles? Where is the video of her doing any type of
18 athletic activity at this time? Where is the video of her
19 playing with her kids? Where is the video of her shell
20 fishing, fishing, or doing any type of athletic activity?
21 They got her walking around. We never said she was
22 crippled. We never said that she was paralyzed. What did
23 she say? Yes, I could squat down. The pain is when I get
24 back up.

25 The hardest thing for a plaintiff's trial

Rebuttal Summation - Plaintiff/Mr. Gridelli

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1 attorney is to get a jury to, to appreciate the injuries
2 of a client. And I have to take some of these expert
3 quotes.

4 Aristotle said: The aim of the wise is to avoid
5 pain and secure pleasure.

6 Stephen King: There is no tyrant as merciless
7 as pain.

8 Saint Augustine: The greatest evil is physical
9 pain.

10 Julius Caesar: It is easier to find a man who
11 will volunteer to die, than to find those who are willing
12 to endure pain with patience.

13 And my favorite George Orwell. Of pain you
14 could wish only one thing, that it should stop. Nothing
15 in the world is so bad as physical pain. It is the face
16 of pain -- In the face of pain there are no heroes.

17 You're going to be asked to award damages if you
18 find the defendant was negligent and caused her injuries
19 or exacerbated her injuries. And if you award it -- and
20 it says on the jury verdict sheet *past damages*. That
21 means pain and suffering, because there is no lost wages
22 claimed here. She was just starting a business. We
23 couldn't prove what she was going to earn. We were trying
24 to be credible to you.

25 Past pain and suffering, four and-a-half years.

Rebuttal Summation - Plaintiff/Mr. Gridelli

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1 You know the whole story; treated, injections, surgery.

2 I submit to you that if you came back with a
3 verdict of \$10 million dollars, that would be excessive.
4 But if you came back with a verdict of \$1 million dollars
5 for past pain and suffering, I submit to you that would be
6 inadequate.

7 Let's talk about future pain and suffering. She
8 is 41. There is a life expectancy of 35.3 years. And the
9 judge will tell you that we use that actuary table because
10 we don't know how long people are going to live. That is
11 the fairest way.

12 THE COURT: You have one minute left.

13 MR. GRIDELLI: How much do you award somebody
14 for 35.3 years of her life is changed. Remember Jonathan
15 Gibson said she is about 70 percent of what she was.

16 I submit to you that if you awarded \$5 million
17 dollars for the next 35 years, that would be excessive.
18 But if you awarded less than a million, that would be
19 inadequate.

20 And ladies and gentlemen, remember if you award
21 something that justice says is 90 percent less or 90
22 percent of what you should, you're not giving 90 percent
23 of justice, you're giving the ten percent of injustice.

24 With Jonathan Gibson, I believe his past loss of
25 services claim -- remember they were just starting their

COURT'S CHARGE

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1 life. They were married. This was their honeymoon time
2 for the first couple of years. And boom, this happened.
3 \$250,000 would be reasonable, I submit to you for past
4 loss of services. Future loss of services, \$300,000 for
5 the next 35 years.

6 Thank you very much.

7 THE COURT: Why don't we take a five minute
8 break. I will take about 15 minutes. So don't talk about
9 the case. Five minutes.

10 (A recess was taken at 10:28 a.m.)

11 (After recess the following occurred.)

12
13 **THE COURT'S CHARGE**

14 THE COURT: Now that the evidence in the case
15 has been presented and the attorneys for the parties have
16 concluded their closing arguments, it's my responsibility
17 to instruct you as to the law that governs this case. My
18 instructions will be in three parts.

19 First, I'll give you instructions regarding the
20 general rules that define and govern the duties of a jury
21 in a civil case.

22 Second, I will instruct you as to the legal
23 elements of the cause of action relative to this case.

24 And third and finally some general rules
25 defining your deliberations as jurors.

COURT'S CHARGE

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1 It is your responsibility and duty to find the
2 facts from all the evidence in this case. You are the
3 sole judges of the facts, not counsel and not myself. I
4 want to impress upon you again the importance of that
5 role. It is for you and you alone to pass on the weight
6 of the evidence, and resolve such conflicts as may have
7 appeared in the evidence, and to draw such inferences as
8 you deem to be reasonable and warranted from the evidence
9 or the lack of evidence.

10 With respect to any question concerning the
11 facts, it is your recollection of the evidence, and yours
12 alone that controls.

13 Parties are equal before the court. This case
14 should be considered and decided by you as an action
15 between parties of equal standing in the community. All
16 persons, corporations and entities stand equal before the
17 law and are to be dealt with as equals in this court. All
18 parties are entitled to equal consideration. No party is
19 entitled to sympathy or favor. You must judge the facts
20 and apply the law as I shall instruct you without bias
21 prejudice or sympathy either for the plaintiffs or the
22 defendants.

23 Burden of proof. In a civil case such as this
24 the plaintiff has the burden of proving the essential
25 elements of their claims against the defendant by a

COURT'S CHARGE

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1 preponderance of the evidence. To establish a claim by
2 the preponderance of the evidence, means simply to prove
3 that something is more likely. A preponderance of the
4 evidence means the greater part of the evidence. It does
5 not mean the greater number of witnesses, or the greater
6 length of time taken by either side.

7 The phrase *preponderance of the evidence* refers
8 to the quality of the evidence, the weight and effect it
9 has on your minds.

10 If the plaintiffs are to win, the evidence that
11 supports their claim must appeal to you as more nearly
12 representing what took place, than the evidence opposed to
13 their claim. To put it differently, if you put plaintiffs
14 and defendants evidence on opposite sides of a scale, the
15 plaintiff would have to make the scales tip slightly in
16 their favor.

17 If the evidence weighs so evenly that you are
18 unable to say there is a preponderance on either side,
19 then you must resolve it in the defendant's favor. To
20 recapitulate briefly; the preponderance of the evidence
21 means such evidence as when you considered and compared
22 with that opposed to it, produces in your mind that the
23 belief of what is sought to be proved is more likely the
24 case than not the case.

25 Now the evidence upon which you are to decide

COURT'S CHARGE

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1 what the facts are comes in several forms; sworn testimony
2 of witnesses both on direct and cross-examination, and
3 regardless who has called them; exhibits the court
4 received in evidence; and facts to which the lawyers have
5 agreed or stipulated.

6 Certain things are not evidence, and are to be
7 disregarded in deciding what the facts are. Again,
8 arguments or statements by lawyers are not evidence.
9 Objections to questions you don't consider. And testimony
10 that has been excluded or stricken, is irrelevant,
11 disregard it. And anything you may have seen or heard
12 outside the courtroom is not evidence.

13 In deciding what the facts are you must consider
14 all the evidence that has been offered. In doing this you
15 must decide which testimony to believe, and which
16 testimony not to believe. In making that decision there
17 are a number of factors you may take into account,
18 including the following:

19 The witness's opportunity to observe the events
20 he or she described; the witness's intelligence and
21 memory; the witness's manner while testifying. Does the
22 witness have an interest in the outcome of the case? Does
23 the witness have any bias or prejudice concerning any part
24 of the matter involved in this case? The reasonableness
25 of the witness' testimony considered in light of all the

COURT'S CHARGE

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1 evidence in the case.

2 In considering the testimony of the plaintiffs
3 or the defendant you must apply the same standards as you
4 apply to any other witness.

5 If you find that a witness's testimony is
6 contradicted by what that witness has said or done at
7 another time, or the testimony of other witnesses, you may
8 disbelieve all or any part of the witness' testimony. But
9 in deciding whether or not to believe the witness, keep
10 this in mind. People sometimes forget things. A
11 contradiction may be an innocent lapse of memory, or it
12 may be an intentional falsehood. Consider therefore,
13 whether it has to do with an important fact, or only a
14 small detail. Different people who remember the same
15 event, may remember it differently, and therefore testify
16 about it differently.

17 You may consider these factors in deciding how
18 much weight to give to the testimony. You are not to give
19 any greater weight or credence to a witness solely because
20 of his title or position.

21 Now ordinarily opinions of witnesses are not
22 received in evidence. However, opinions of expert
23 witnesses qualified by training and experience in a
24 particular field of specialized learning are received in
25 evidence. And the expert witness is committed and

COURT'S CHARGE

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1 expected to give you the reasons for, and the basis of his
2 or her opinion.

3 You should weigh and evaluate the testimony of
4 an expert witness precisely as you weigh the testimony of
5 any other witness.

6 We now go to the law portion of the case.

7 Law portion. This case is brought by the
8 plaintiffs, Heather Gibson and her husband Jonathan Gibson
9 against defendant Cross Sound Ferry Service, Inc, who I
10 shall refer to as the defendant.

11 As a corporation, Cross Sound Ferry Services
12 acts only through its employees. When I refer to the
13 defendant in this case, I am referring to Cross Sound
14 Ferry Services, Inc and its employees.

15 Defendant owns and operates a ferry known as the
16 Sea Jet that runs between Orient Point, New York, and New
17 London, Connecticut, which I will refer to as the ferry.

18 Plaintiff Heather Gibson alleges that she
19 suffered personal injuries as a result of defendant's
20 negligence while she was a passenger on the ferry.

21 Plaintiff Jonathan Gibson seeks damages due to
22 the loss of his wife's services. Defendant denies all of
23 plaintiffs' claims.

24 You will first determine whether defendant's
25 negligence was the legal cause of plaintiff Heather

COURT'S CHARGE

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1 Gibson's injury. If, and only if the defendant is found
2 to have been negligent, will you determine the claim of
3 Jonathan Gibson for the loss of the wife's services, as I
4 will explain that claim to you.

5 For Heather Gibson to prevail on her claim of
6 negligence, she must prove the following three elements by
7 a preponderance of the evidence.

8 1. Negligence of the defendant.

9 2. Proximate cause.

10 3. Damages.

11 The burden of proof as to the defendant's
12 negligence is on the plaintiff. If she fails to sustain
13 her burden you will find for the defendant.

14 I will now further explain plaintiffs' claims
15 and provide you with further definitions and instructions.

16 Negligence defined. Negligence is the lack of
17 ordinary care. It's the failure to use that degree of
18 care that a reasonable, prudent person would have used
19 under the same circumstances. Negligence may arise from
20 doing an act that a reasonable, prudent person would not
21 have done under the same circumstances. Or on the other
22 hand, from failing to do an act that a reasonable, prudent
23 person would have done under the same circumstances.

24 In this case defendant owed a duty of reasonable
25 care to act for the safety of its passengers. Heather

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1 Gibson's claim of negligence is that defendant failed to
2 exercise such reasonable care in the operation of the
3 ferry.

4 *Reasonable care* means that degree of care that a
5 reasonable, prudent ship owner would use under the same
6 circumstances, taking into account the foreseeable risk of
7 injury.

8 A ship owner is not an insurer of passenger
9 safety. Instead there must be some failure to exercise
10 reasonable care before liability may be imposed.

11 Because starting, slowing or stopping may not
12 always be done smoothly, and occasionally there may be
13 some jolting. The ferry operator is not liable for
14 passengers' -- injuries to a passenger when that happens.
15 The operator of a ferry must, however, avoid sudden,
16 unusual and violent jerks, lurks or stops.

17 If you find that the movement of the ferry was
18 sudden, unusual and violent, then you will find that
19 defendant was negligent. If, however, you find that a
20 stop or movement was not sudden, unusual or violent, you
21 will find that the defendant was not negligent.

22 Ultimately you will decide whether defendant
23 acted reasonably under the totality of the circumstances.

24 *Proximate cause.* I think I'm skipping a page.

25 *Foreseeable* defined. Negligence requires a

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1 reasonable foreseeable danger of injury to another, and
2 conduct that is unreasonable in proportion to that danger.

3 A ship owner is only responsible for the results
4 of his conduct if the risk of injury is reasonably
5 foreseeable. The exact occurrence or exact injuries does
6 not have to be foreseeable. But injury as a result of
7 negligent conduct must be not merely possible, but
8 probable. There is negligence if a reasonable, prudent
9 ship owner could foresee injury as a result of his
10 conduct, and acted unreasonably in light of what he could
11 foresee.

12 On the other hand, there is no negligence if a
13 reasonably prudent ship owner could not have foreseen any
14 injury as a result of his conduct, or acted reasonably in
15 light of what he could have foreseen.

16 *Proximate cause.* In all causes of action the
17 wrong or fault must have been a proximate cause of the
18 injury. I will define proximate cause. And act or
19 omission is a proximate cause of an injury, if it was a
20 substantial factor in bringing about the injury. That is,
21 if it had such an effect in producing the injury that a
22 reasonable person would regard it as the cause of the
23 injury.

24 *Damages.* If you find that plaintiff is liable
25 for the injuries suffered by Heather Gibson, then you must

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1 determine the amount of damages that she is entitled to
2 recover. My charges to you on the law of damages must not
3 be taken as a suggestion that you should find for Heather
4 Gibson. It is for you to decide from the evidence
5 presented and the rules of law that I have given you,
6 whether she is entitled to recover from defendants.

7 If you decide that she is not entitled to
8 recover, you go no further in considering damages. Only
9 if you decide that Heather Gibson is entitled to recover,
10 will you consider the measure of damages.

11 If you decide that Heather Gibson is entitled to
12 a verdict, any award of damages must be reasonable. You
13 may award her only such damages as would reasonably
14 compensate her for past and future conscious pain and
15 suffering. In assessing damages you will have to take
16 into account any injury which you find was caused by the
17 defendant's negligence.

18 If you find that Heather Gibson had a
19 preexisting medical condition, and that as a result of the
20 negligence of the defendant this preexisting condition was
21 aggravated, you shall award damages for the aggravation of
22 the preexisting condition. But you should not award any
23 damages for the preexisting condition itself.

24 *Conscious pain and suffering* means pain and
25 suffering of which there was some level awareness by the

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1 plaintiff. Pain and suffering includes loss of enjoyment
2 of life. Loss of enjoyment of life involves a loss of the
3 ability to perform daily functions, to participate in
4 activities which were part of life before the injuries.

5 You are not permitted to award speculative
6 damages.

7 *Permanency of injuries; life expectancy.* To the
8 extent that you determine that any of Heather Gibson's
9 injuries are permanent, she is entitled to recover for
10 future damages. In this regard you will consider her age
11 and life expectancy. Evidence of life expectancy is found
12 in the life expectancy tables. Heather Gibson has a
13 remaining life expectancy of 35.3 years. Life expectancy
14 tables provide nothing more than a statistical average. A
15 person may live longer or die sooner than the time
16 indicated by those tables.

17 *Loss of services.* Jonathan Gibson, plaintiff
18 Heather Gibson's husband has a separate claim in this
19 lawsuit. His claim is for the loss of services of his
20 wife. This claim will be considered by you only if you
21 find for Heather Gibson, and find there was negligence.

22 If you find that Jonathan Gibson is entitled to
23 recover, you will award him damages for the pecuniary loss
24 which you found he sustained by the loss of his wife's
25 services and society.

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1 Although sometimes this is referred to as loss
2 of society, not only services, but also such elements as
3 love, companionship, affection, society and sexual
4 relations. You will award Jonathan Gibson such an amount
5 based upon the evidence, based on your own observations,
6 experience and knowledge, conscientiously applied to the
7 facts and circumstances as in your judgment will
8 compensate Jonathan Gibson for the pecuniary loss you find
9 he has sustained, and is reasonably certain to sustain in
10 the future by reason of his wife's inability to perform
11 such services and provide society as a result of her
12 injuries.

13 We now come to the conclusion, which is very
14 brief.

15 I remind you once again that it is your
16 responsibility to judge the facts in this case from all
17 the evidence submitted during the trial, and to apply the
18 law as I have just given it to you.

19 Your deliberations should include a rational
20 discussion of the evidence in this case by all of you. In
21 other words, I am now saying, discuss the case amongst
22 yourselves.

23 In your deliberations you're entitled to your
24 own opinion, but you should exchange views with your
25 fellow jurors, and listen carefully to each other. While

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1 you should not hesitate to change your opinion if you are
2 convinced that another opinion is correct, your decision
3 must be your own.

4 If you wish to have some of the testimony
5 repeated, you may make such a request. I'll call you into
6 court, and have the reporter read those portions that you
7 desire to hear. If you wish to hear some portions of
8 these instructions repeated, make that same request.
9 Either can be accomplished by giving a note to the clerk,
10 to Joe.

11 If it becomes necessary during your
12 deliberations to communicate with me for any reason, send
13 me a note through Joe. No communication, except by a
14 writing, which is the note. The court will not
15 communicate with any member on the jury on any subject
16 touching on the merits of the case, other than by writing
17 or orally in open court.

18 By that I mean sometimes you'll send in a note,
19 and I can answer it by just writing on the note itself.
20 Sometimes we can't. Sometimes you want to hear the
21 testimony. Sometimes you want to hear the flavor of the
22 testimony. So assuming this was an accident case, and you
23 wrote, asked through your note, What was, what did witness
24 A say the color of the light was?

25 Any note you send me has to go to the lawyers.

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1 They read it. If they agree and I agree with hit, we'll
2 put *red* on it and send it right back.

3 Sometimes you want to hear the flavor of what a
4 particular witness started out to say, or something like
5 that. So you ask for that witness. We will play that
6 testimony.

7 When you all are satisfied you have heard
8 enough, stop the reading. You don't have to go back to
9 continue with the reading. You don't have to listen to
10 cross-examination. You don't have to read the redirect,
11 or anything like that. If you are all satisfied, stop the
12 reading. You're not penalized because you asked for a
13 particular thing.

14 But it has to be unanimous. Anything you do as
15 a jury has to be unanimous.

16 I know when you know when you've heard enough.
17 I can see your heads looking at each other and saying; *did*
18 *we hear enough?* And everyone is saying; *yeah*. And I'll
19 ask you, *do you all agree you heard enough?* And if you
20 say *enough*, I send you back.

21 There is another rule. You're not supposed to
22 tell me where you stand. You can't say it's six to one,
23 four to three, or anything like that. Not that I'm not
24 supposed to know. Remember I said anything you send me I
25 have to give to the lawyers. They're not supposed to

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1 know.

2 So don't, if you send me a note, don't tell me
3 how you stand numerically, unless you all unanimously
4 agree on the verdict.

5 Again, I will repeat, any verdict you reach must
6 be unanimous. Your oath sums up your duty that you will
7 without fear or favor to any persons conscientiously and
8 truly try the issues before you according to the evidence
9 given to you in open court.

10 Now as you notice, I have read my charge to you.
11 I now have a sidebar with the lawyers to see, did I miss a
12 page, or miss a paragraph, or did I say something wrong.

13 So lawyers, sidebar.

14 (The following occurred at sidebar.)

15 THE COURT: Did I read it correctly?

16 MR. GRIDELLI: *If you find that plaintiff is*
17 *liable.* It should be *defendant.*

18 (The following occurred in open court.)

19 THE COURT: Okay. I read it wrong, they tell
20 me. At the beginning I said, *If you find that defendant*
21 *is liable.* That is what I should have said.

22 They said I said, *If you find plaintiff is*
23 *liable.* Obviously that is wrong, and I correct it.

24 MR. GRIDELLI: Thank you, your Honor.

25 THE COURT: Now let me tell you what is going to

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1 happen.

2 I told you not to make notes of my summation --
3 I mean my charge to you on the law. There is a reason.
4 I'm sending you in what I read, the law portion only. So
5 everyone of you is going to get a copy of it. So if there
6 is something you missed, or you want to see what I said,
7 you're going to have a copy. That's why.

8 We will now have the lawyers get all of the
9 exhibits together. Anything that is marked in evidence,
10 and I always say *in evidence*, and it gets boring after a
11 while. Why am I saying it? Because if there is a dispute
12 we go to the record and we see what the evidence is.

13 My statement was *in evidence*. If it is not my
14 statement, it doesn't come in. You will get everything
15 that is marked in evidence.

16 The first thing you have to do is find a
17 foreperson. Do that quickly. That person doesn't get
18 more money, doesn't get two votes. They only have one
19 vote. They can't change the vote. But that person will
20 be in charge, because I'm going to send in, as I said, the
21 law portion.

22 I'm going to send in -- I'm going to send in the
23 verdict sheet. And if you follow the verdict sheet it
24 will help. And the foreperson, whoever he or she is will
25 see that if you follow the verdict sheet it will tell you;

1 Point 1, go to 2, go to 3. So if you follow that it will
2 go much easier for you.

3 I think I covered everything. I think I can
4 send you out. Oh, lunch you'll have at twelve o'clock.

5 Start your deliberations. You will get the
6 charge that I gave you on the law, and we'll get together
7 all of the evidence.

8 THE CLERK: Did they review it, judge, and the
9 verdict sheet?

10 THE COURT: Yes.

11 You all agree that the verdict sheet has been
12 examined by all of you?

13 MR. GRIDELLI: Yes, your Honor.

14 THE COURT: So the law and the verdict sheet and
15 the evidence come in.

16 Good luck.

17 (The jury left the courtroom at 11:00 a.m. to
18 begin deliberations.)

19 THE COURT: Now make sure what is in evidence
20 goes in, and not something else. Have you gone offer it?

21 MR. GRIDELLI: Not together, your Honor.

22 THE COURT: Well, it would help if you do it
23 together.

24 MR. GRIDELLI: Yes, right. We'll do it now.

25 THE CLERK: Court Exhibit Number 1, letter dated

November 17, 2011.

Court Exhibit 2, a letter dated November 18, 2011.

Court Exhibit 3 is a verdict sheet.

Court Exhibit 4 is the charge.

(A recess was taken at 11:00 a.m.)

(Continued on the following page.)

(The following ensued in the presence of the jury at 12:20 pm.)

VERDICT

THE COURT: We have a note from the jury, marked Court Exhibit No. 5: *"Your Honor, we have reached a verdict."*

I will have the clerk take the verdict.

THE COURTROOM DEPUTY: Yes, judge.

Madam forelady, please rise.

Has the jury reached a verdict? Yes or no?

THE FOREPERSON: Yes.

THE COURTROOM DEPUTY: Please refer to the verdict sheet.

Question No. 1. Was the defendant negligent?

Yes or no?

THE FOREPERSON: No.

THE COURTROOM DEPUTY: Be seated, please.

1 THE COURT: Poll the jury.

2 THE COURTROOM DEPUTY: Ladies and gentlemen, as
3 the court has received your verdict, you say you find in
4 favor of the defendant and against the plaintiffs.

5 Juror No. 1, is that your verdict?

6 JUROR NO. 1: Yes.

7 THE COURTROOM DEPUTY: Juror No. 2, is that your
8 verdict?

9 JUROR NO. 2: Yes.

10 THE COURTROOM DEPUTY: Juror No. 3, is that your
11 verdict?

12 JUROR NO. 3: Yes.

13 THE COURTROOM DEPUTY: Juror No. 4, is that your
14 verdict?

15 JUROR NO. 4: Yes.

16 THE COURTROOM DEPUTY: Juror No. 5, is that your
17 verdict?

18 JUROR NO. 5: Yes.

19 THE COURTROOM DEPUTY: Juror No. 6, is that your
20 verdict?

21 JUROR NO. 6: Yes.

22 THE COURTROOM DEPUTY: Juror No. 7, is that your
23 verdict?

24 JUROR NO. 7: Yes.

25 THE COURTROOM DEPUTY: And so say you all?

1 THE JURY: Yes.

2 THE COURTROOM DEPUTY: Jury polled, judge.

3 THE COURT: The jury is excused with the thanks
4 of to he court.

5 I will come in and talk with you. I understand
6 your lunch is here. I will come in and talk to you.

7 You are discharged.

8 (The following ensued in the absence of the
9 jury.)

10 THE COURT: Any motions?

11 MR. GRIDELLI: Yes, your Honor.

12 Most respectfully, I would move tos et aside the
13 verdict as against the weight of the evidence in this
14 case.

15 THE COURT: Denied.

16 Thank you. I will talk to the jury. They are
17 going to have their lunch and they are free to leave.

18 (Proceedings adjourned at 12:25 pm.)
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I N D E X

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